

SEP 18 1978 - 8 55 AM

8-261A011

INTERSTATE COMMERCE COMMISSION

RECORDATION NO. 9673 Filed & Recorded

Interstate Commerce Commission
Washington, D. C.

SEP 18 1978 - 8 55 AM

SEP 18 1978

Date

Fee \$ 50

Gentlemen:

INTERSTATE COMMERCE COMMISSION

ICC Washington, D. C.

Enclosed for recordation under the provisions of Section 20c of the Interstate Commerce Act, as amended, are the original and nine counterparts each of a Conditional Sale Agreement dated as of September 1, 1978 and an Agreement and Assignment dated as of September 1, 1978 relating thereto.

The general description of the railroad equipment covered by the enclosed documents is set forth in Schedules A and B attached to this letter and made a part hereof.

The names and addresses of the parties are:

Owner-Vendors under
Conditional Sale
Agreement and Assignors
under Agreement and
Assignment:

General Motors Corporation
(Electro-Motive Division)
9301 55th Street
LaGrange, Illinois 60525

PACCAR Inc
777 106th Avenue, N.E.
Bellevue, Washington 98009

Vendee under
Conditional Sale
Agreement:

Missouri Pacific Railroad Company
210 North 13th Street
St. Louis, Missouri 63103

Assignee under
Agreement and
Assignment:

Mercantile Trust Company N.A.
Mercantile Tower
St. Louis, Missouri 63166

The undersigned is the Vendee named above and has knowledge of the matters set forth in the enclosed documents.

Please return the original and seven copies of the Conditional Sale Agreement and the Agreement and Assignment to Larry Elkins, Esq., Chapman and Cutler, 111 West Monroe Street, Chicago, Illinois 60603.

Enclosed is a check in the amount of \$50.00 covering the required recording fee.

Very truly yours,

MISSOURI PACIFIC RAILROAD COMPANY

By

M. M. Henney
Its SENIOR VICE PRESIDENT & GENERAL COUNSEL

VENDEE AS AFORESAID

RECEIVED

SEP 18 8 47 AM '78

I.C.C.

FEE OPERATION BR.

Enclosures

CT. Number
Chapman and Cutler

9673/A
RECORDATION NO. Filed & Recorded

SEP 18 1978 -8 55 AM

INTERSTATE COMMERCE COMMISSION

AGREEMENT AND ASSIGNMENT

Dated as of September 1, 1978

Among

GENERAL MOTORS CORPORATION
(ELECTRO-MOTIVE DIVISION),

and

PACCAR INC

as Manufacturers

And

MERCANTILE TRUST COMPANY N.A.,

as Assignee

Re:

\$9,450,000 Maximum Principal Amount
9-1/8% Conditional Sale Indebtedness
Due 1979-1994

of

MISSOURI PACIFIC RAILROAD COMPANY

(MoPac No. 79-1)
(15 EMD SD-40-2 Locomotives)
(53 Boxcars)

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AGREEMENT AND ASSIGNMENT

AGREEMENT AND ASSIGNMENT dated as of September 1, 1978 among GENERAL MOTORS CORPORATION (ELECTRO-MOTIVE DIVISION), PACCAR INC (General Motors Corporation (Electro Motive Division) and PACCAR INC being hereinafter sometimes collectively referred to as the "Manufacturers" and individually as a "Manufacturer") and MERCANTILE TRUST COMPANY N.A., acting as agent and assignee under the Finance Agreement hereinafter referred to (said Bank as so acting being hereinafter called the "Assignee");

WHEREAS, the Manufacturers and MISSOURI PACIFIC RAILROAD COMPANY (the "Railroad") have entered into a Conditional Sale Agreement dated as of September 1, 1978 (the "Conditional Sale Agreement") covering the construction, sale and delivery on the conditions therein set forth by the Manufacturers and the purchase by the Railroad of the railroad equipment described in Schedules A and B to the Conditional Sale Agreement (collectively the "Equipment" and individually an "Item" or "Item of Equipment"); and

WHEREAS, the Assignee, the Railroad and the institutional investors named therein in Schedule 1 thereto (the "Investors") have entered into a Finance Agreement dated as of September 1, 1978 (the "Finance Agreement") providing for the acquisition from the Manufacturers by the Assignee of the right, title and interest of the Manufacturers under the Conditional Sale Agreement, subject to the conditions set forth below.

NOW, THEREFORE, THIS AGREEMENT AND ASSIGNMENT (the "Assignment"):

W I T N E S S E T H:

That, in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration paid by the Assignee to the Manufacturers, the receipt of which is hereby acknowledged, as well as of the mutual covenants herein contained:

Section 1. Assignment by Manufacturers. Each Manufacturer hereby assigns, transfers and sets over unto the Assignee, its successors and assigns:

(a) All the right, security title and interest of such Manufacturer in and to each Item of Equipment to be built by it when and as delivered and accepted and upon payment by the Assignee to such Manufacturer of the amount required to be paid under Section 5 hereof;

(b) All the right, title and interest of such Manufacturer in and to the Conditional Sale Agreement (except the right to construct and deliver the various Items of Equipment to be built by it pursuant to Sections 1 and 2.1 thereof and the right to receive the payments specified

in Sections 2.3 and 14.7 thereof and reimbursement for taxes paid or incurred by such Manufacturer and the right to indemnity from the Railroad for claims arising against such Manufacturer as provided in Sections 12.1 and 13 thereof), and in and to any and all amounts which may be or become due or owing to such Manufacturer under the Conditional Sale Agreement on account of the indebtedness in respect of the Purchase Price (as defined in the Conditional Sale Agreement) of the Equipment and interest thereon, and in and to any other sums becoming due from the Railroad under the Conditional Sale Agreement, other than those hereinabove excluded; and

(c) Except as limited above in subparagraph (b) hereof, all of such Manufacturer's rights, powers, privileges and remedies under the Conditional Sale Agreement;

without any recourse, however, against such Manufacturer for or on account of the failure of the Railroad to make any of the payments provided for in, or otherwise to comply with; any of the provisions of the Conditional Sale Agreement; provided, however, that this Assignment shall not subject the Assignee to, or transfer or pass, or in any way affect or modify the obligations of such Manufacturer to construct and deliver the various Items of Equipment in accordance with the Conditional Sale Agreement or with respect to its warranties and agreements contained in Sections 12.3 and 13 of the Conditional Sale Agreement or relieve the Railroad from its obligations to the Manufacturer under Sections 2, 3, 7, 12, 13, 14, 17 and 26 of the Conditional Sale Agreement, it being understood and agreed that notwithstanding this Assignment, or any subsequent assignment pursuant to the provisions of Section 14 of the Conditional Sale Agreement, all obligations of such Manufacturer to the Railroad shall be and remain enforceable by the Railroad, its successors and assigns, against and only against such Manufacturer. In furtherance of the foregoing assignment and transfer, each Manufacturer hereby authorizes and empowers the Assignee in the Assignee's own name, or in the name of the Assignee's nominee, or in the name of and as attorney, hereby irrevocably constituted, for such Manufacturer to ask, demand, sue for, collect, receive and enforce any and all sums to which the Assignee is or may become entitled under this Assignment and compliance by the Railroad with the terms and agreements on its part to be performed under the Conditional Sale Agreement, but at the expense and liability and for the sole benefit of the Assignee.

Section 2. Covenants and Agreements of Manufacturers.
Each Manufacturer covenants and agrees that it will deliver the various Items of Equipment to be manufactured by it to the Railroad, in accordance with the provisions of the Conditional Sale Agreement, and that, notwithstanding this Assignment, it will perform and fully comply with each and all of the covenants and conditions of the Conditional Sale Agreement set forth to be performed and complied with by such Manufacturer. Each Manufacturer further covenants and agrees that it will warrant to the Assignee and the Railroad that at the time of delivery of each Item of Equipment to be

manufactured by it to the Railroad under the Conditional Sale Agreement it had legal title to such Item and good and lawful right to sell such Item and the title to such Item was free of all claims, liens and encumbrances of any nature except only the right of such Manufacturer to receive payment of its invoice price therefor and the rights of the Railroad under the Conditional Sale Agreement; and such Manufacturer further covenants and agrees that it will defend the title to such Item against the demands of all persons whomsoever based on claims originating prior to said delivery of such Item by such Manufacturer to the Railroad; all subject, however, to the provisions of the Conditional Sale Agreement and the rights of the Railroad thereunder.

Each Manufacturer covenants and agrees with the Assignee that in any suit, proceeding or action brought by the Assignee under the Conditional Sale Agreement for any installment of, or interest on, indebtedness in respect of the Purchase Price of the Equipment or to enforce any provision of the Conditional Sale Agreement, such Manufacturer will indemnify, protect and hold harmless the Assignee from and against all expense, loss or damage suffered by reason of any defense, set-off, counterclaim or recoupment whatsoever of the Railroad arising out of a breach by such Manufacturer of any obligation with respect to the Equipment or the manufacture, construction, delivery or warranty thereof by such Manufacturer, or under Sections 12 and 13 of the Conditional Sale Agreement, or by reason of any defense, set-off, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Railroad by such Manufacturer. Each Manufacturer's obligation so to indemnify, protect and hold harmless the Assignee is conditional upon (a) the Assignee's timely motion or other appropriate action, on the basis of Section 14.4 of the Conditional Sale Agreement, to strike any defense, set-off, counterclaim or recoupment asserted by the Railroad in any such suit, proceeding or action and (b) if the court or other body having jurisdiction in such suit, proceeding or action denies such motion or other action and accepts such defense, set-off, counterclaim or recoupment as a triable issue in such proceeding or action, the Assignee's prompt notification to the Manufacturer of the asserted defense, set-off, counterclaim or recoupment and the Assignee's giving such Manufacturer the right, at such Manufacturer's expense, to compromise, settle or defend against such defense, set-off, counterclaim or recoupment. Any and all such obligations shall be and remain enforceable according to their merits by the Railroad against and only against the Manufacturers and shall not be enforceable against the Assignee or any party or parties in whom security title to the Equipment or any unit thereof or any of the rights of the Manufacturers under the Conditional Sale Agreement shall vest by reason of this Assignment or of successive assignments.

Each Manufacturer will indemnify, protect and hold harmless the Assignee from and against any and all liability, claims, demands, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Assignee or its assigns because of the use in or

about the construction or operation of the Equipment, or any unit thereof, of any design, article or material which infringes or is claimed to infringe on any patent or other right, except in cases of designs, systems, processes, formulae and combinations specified by the Railroad and not developed or purported to be developed by the Manufacturer and articles and materials specified by the Railroad and not manufactured by such Manufacturer. The Assignee will give notice to the Manufacturers of any suit, proceeding or action by or against the Assignee herein described.

Each Manufacturer agrees that any amount payable to it by the Railroad, whether pursuant to the Conditional Sale Agreement or otherwise, not hereby assigned to the Assignee, shall not be secured by any lien or charge on any Item of Equipment other than such liens or charges as may result from the re-assignment to the Manufacturer in accordance with the last two paragraphs of Section 5 hereof.

Section 3. Equipment Markings. Each Manufacturer will cause to be plainly, distinctly, permanently and conspicuously marked by a plate or stencil in contrasting color on both sides of each Item of Equipment to be built by it, at the time of delivery thereof to the Railroad, in letters not less than one inch in height, the following legend:

"Unit Subject to Security Interest of the Agent
Bank under Conditional Sale Agreement Recorded with
the I.C.C."

Section 4. Recordation. Upon request of the Assignee, its successors and assigns, each Manufacturer will execute and deliver all instruments which may be necessary or proper in order to discharge of record the Conditional Sale Agreement or any other instrument evidencing any interest of such Manufacturer therein or in the Equipment.

Section 5. Conditions Precedent to Payment by Assignee. Subject to timely receipt by the Assignee of funds sufficient for the purpose, the Assignee, on or before 1:00 P.M., St. Louis, Missouri time, on the Closing Date (the "Closing Date") fixed as provided in Section 3.4 of the Conditional Sale Agreement with respect to a Group (as defined in Section 3.2 of said Agreement) of Equipment, shall pay to the Manufacturer of each Item of Equipment in such group by wire transfer of immediately available funds to such bank in the continental United States as such Manufacturer shall designate to the Assignee for the account of such Manufacturer an amount equal to the Purchase Price of such Group, provided that there shall have been delivered to the Assignee and Messrs. Chapman and Cutler, the following documents, in such number of counterparts or copies as may reasonably be requested, in form and substance satisfactory to the Assignee and Messrs. Chapman and Cutler:

(a) Bill or Bills of Sale from such Manufacturer to the Assignee, transferring to the Assignee security title to the Items of Equipment in the Group and warranting

to the Assignee and to the Railroad that at the time of delivery thereof to the Railroad under the Conditional Sale Agreement such Manufacturer had legal title to such Items, good and lawful right to sell such Items, and title to such Items was free of all claims, liens and encumbrances of any nature except only the rights of the Railroad under the Conditional Sale Agreement;

(b) Certificate or Certificates of Acceptance signed by an inspector or other authorized representative of the Railroad stating that the Items of Equipment in the Group have been inspected and accepted by him on behalf of the Railroad and further stating that there was plainly, distinctly, permanently and conspicuously marked by a plate or stencil in contrasting color on each side of each of such Items at the time of its acceptance, in letters not less than one inch in height, the following legend:

"Unit Subject to Security Interest of
the Agent Bank under Conditional Sale
Agreement Recorded with the I.C.C."

(c) Invoice from such Manufacturer to the Railroad and the Assignee for the Items of Equipment in the Group accompanied by or having endorsed thereon a certification by the Railroad as to the correctness of the price of such Items as set forth in said invoice;

(d) Opinion of Messrs. Chapman and Cutler, special counsel to the Investors, addressed to the Assignee and the Investors, dated as of the Closing Date, in each case to the effect that (i) the Conditional Sale Agreement has been duly authorized, executed and delivered by the parties thereto and is a valid and binding instrument enforceable in accordance with its terms, (ii) this Agreement and, assuming the due authorization, execution and delivery by the Investors of the Finance Agreement, the Finance Agreement have been duly authorized, executed and delivered by the respective parties thereto and are valid and binding instruments enforceable in accordance with their respective terms, (iii) the Assignee is vested with all the rights, titles, interests, powers, privileges and remedies purported to be assigned to it by this Assignment, (iv) security title to the Items of Equipment in the Group is validly vested in the Assignee and such Items, at the time of delivery thereof to the Railroad under the Conditional Sale Agreement, were free of all claims, liens and encumbrances except only for the rights of the Railroad under the Conditional Sale Agreement, (v) no approval of the Interstate Commerce Commission or any other governmental authority is necessary for the execution and delivery of the Conditional Sale Agreement or this Assignment, (vi)

the Conditional Sale Agreement and this Assignment have been duly filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act and no other filing or recordation is necessary for the protection of the rights of the Assignee in the United States of America, and (vii) the offering, sale and delivery of the Conditional Sale Agreement and the conditional sale indebtedness payable thereunder under the circumstances and the Certificates of Interest issued pursuant to the Finance Agreement under the circumstances contemplated by the Finance Agreement are exempted securities within the meaning of Section 3(a)(6) of the Securities Act of 1933, as amended, and Section 304(a)(4)(A) of the Trust Indenture Act of 1939, as amended, and it is not necessary, in connection with the offering, sale and delivery of the Conditional Sale Agreement, the conditional sale indebtedness payable thereunder and the Certificates of Interest issued pursuant to the Finance Agreement to register any security under said Securities Act or to qualify as an indenture under said Trust Indenture Act;

(e) Opinion of counsel for the Railroad addressed to the Assignee and the Investors, dated as of such Closing Date, to the effect set forth in clauses (iv), (v), and (vi) of subparagraph (d) above, and stating that (i) the Railroad is a duly organized and existing corporation in good standing under the laws of its jurisdiction of incorporation, and has the power and authority to own its properties and to carry on its business as now conducted and is duly qualified to do business as a foreign corporation in all states where the character of its properties or the nature of its activities makes such qualification necessary; (ii) the Conditional Sale Agreement and the Finance Agreement have each been duly authorized, executed and delivered on behalf of the Railroad and are valid and binding instruments enforceable against the Railroad in accordance with their respective terms; and (iii) the execution and delivery by the Railroad of the Conditional Sale Agreement and the Finance Agreement do not violate any provision of any law, any order of any court or governmental agency, the Charter or By-laws of the Railroad, or any indenture, agreement, or other instrument to which the Railroad is a party or by which it, or any of its property is bound, and will not be in conflict with, result in the breach of, or constitute (with due notice or lapse of time, or both) a default under, any such indenture, agreement or other instrument, or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the Railroad;

(f) Opinion of counsel for such Manufacturer, addressed to the Railroad, the Assignee and the Investors, dated as of such Closing Date, to the effect set forth in clauses (iii) and (iv) of subparagraph (d) above and stating that (i) such Manufacturer is a duly organized and existing corporation in good standing under the laws of the state of its incorporation and has the power and authority to own its properties and to carry on its business as now conducted, and (ii) the Conditional Sale Agreement and this Assignment have each been duly authorized, executed and delivered by such Manufacturer and, assuming the due authorization, execution and delivery thereof by each other party thereto, are valid instruments binding upon such Manufacturer and enforceable against such Manufacturer in accordance with their respective terms; and

(g) Certificate of a Vice President of the Railroad to the effect that no Event of Default as specified in the Conditional Sale Agreement or any event which with the lapse of time and/or notice provided for in the Conditional Sale Agreement would constitute such an Event of Default, has occurred and is continuing, and to the effect that, since December 31, 1977, there has been no material adverse change in the affairs or financial condition of the Railroad.

In giving the opinions specified in the preceding subparagraphs (d), (e) and (f), counsel may qualify any opinion to the effect that any agreement is a valid and binding instrument enforceable in accordance with its terms by a general reference to limitations as to enforceability imposed by bankruptcy, insolvency, reorganization, moratorium or other laws affecting the enforcement of creditors' rights generally. In giving the opinions specified in the preceding subparagraph (d), counsel may in fact rely as to the title to the Items of Equipment upon the opinion of counsel for the Manufacturer of such Items.

The Assignee shall not be obligated to make any of the above mentioned payments at any time while an Event of Default, or any event which with the lapse of time and/or notice provided for in the Conditional Sale Agreement would constitute an Event of Default, shall be subsisting under the Conditional Sale Agreement. In the event that the Assignee shall not make any such payment, the Assignee shall reassign to the Manufacturer to whom payment was to be made, without recourse to the Assignee, all right, security title and interest of the Assignee in and to the Items of Equipment with respect to which payment has not been made by the Assignee.

It is understood and agreed that the Assignee shall not be required to make any payment with respect to any Items of Equipment excluded from the Conditional Sale Agreement pursuant to Section 2.3 thereof. The Assignee shall at the request of

any Manufacturer or the Railroad execute or join in the execution of such supplemental agreement as may be deemed necessary or appropriate to exclude, or if such Equipment shall have been delivered and accepted, to remove, any such Equipment from the Conditional Sale Agreement and from this Agreement and Assignment but fully preserving such Manufacturer's security title to such Equipment in a manner acceptable to such Manufacturer.

Section 6. Further Assignments. Subject to the terms and provisions of the Finance Agreement, the Assignee may assign in the entirety all of its rights under the Conditional Sale Agreement, including the right to receive any payments due or to become due to it from the Railroad thereunder. In the event of any such assignment each such subsequent or successive assignee shall, to the extent of such assignment, enjoy all the rights and privileges and be subject to all the obligations of the Assignee hereunder.

Section 7. Representation of Manufacturers; Further Assurances. Each Manufacturer hereby:

(a) represents and warrants to the Assignee, its successors and assigns, that the Conditional Sale Agreement was duly authorized and lawfully executed and delivered by it for a valid consideration, that (assuming due authorization, execution and delivery by the other parties thereto) it is a valid and existing agreement binding upon such Manufacturer and the other parties thereto, and that it is now in force without amendment thereto; and

(b) covenants and agrees that it will from time to time and at all times, at the request of the Assignee or its successors or assigns, make, execute and deliver all such further instruments of assignment, transfer and assurance and do such further acts and things as may be necessary and appropriate in the premises to give effect to the provisions hereinabove set forth and more perfectly to confirm the rights, security titles and interests hereby assigned and transferred to the Assignee or intended so to be.

Section 8. Governing Law. The terms of this Assignment and all rights and obligations hereunder shall be governed by the laws of the State of Missouri; provided, however, that the parties shall be entitled to all the rights conferred by Section 20c of the Interstate Commerce Act and such additional rights arising out of the filing, recording or depositing of the Conditional Sale Agreement and this Assignment as shall be conferred by the laws of the several jurisdictions in which the Conditional Sale Agreement or this Assignment shall be filed, recorded or deposited.

Section 9. Several Obligations. The rights and undertakings of each Manufacturer and the rights and obligations of the Assignee with respect to each Manufacturer hereunder are several and not joint.

Section 10. Execution in Counterparts. This Assignment may be executed in any number of counterparts, all of which together shall constitute a single instrument. It shall not be necessary that any counterpart be signed by all of the parties hereto so long as at least one counterpart is signed by each party hereto. The Assignee agrees to deliver one of such counterparts, or a certified copy thereof, to the Railroad. Although this Assignment is dated for convenience as of the date first above written, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

IN WITNESS WHEREOF, each Manufacturer and the Assignee have caused these presents to be executed in their respective corporate names by officers or representatives duly authorized, and their respective corporate seals to be affixed and duly attested, all as of the day, month and year first above written.

(Corporate Seal)

GENERAL MOTORS CORPORATION
(ELECTRO-MOTIVE DIVISION)

Attest:

Assistant Secretary

By _____
Vice President

Attest:

PACCAR INC

Assistant Secretary

By _____
Vice President

(Corporate Seal)

MERCANTILE TRUST COMPANY N.A., as Agent

Attest:

Victor Zammitt
Assistant Secretary

By *Mr. Green*
Vice President

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

On this _____ day of September, 1978, before me personally appeared _____, to me personally known, who, being by me duly sworn, says that he is a Vice President of GENERAL MOTORS CORPORATION (ELECTRO-MOTIVE DIVISION), that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Notary Public

(Seal)

My Commission Expires:

STATE OF MISSOURI)
) SS
CITY OF ST. LOUIS)

On this 14th day of September, 1978, before me personally appeared H.W. Green, to me personally known, who, being by me duly sworn, says that he is a Vice President of MERCANTILE TRUST COMPANY N.A., that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Berrien Elwes Starr

Notary Public
Berrien Elwes Starr

(Seal)

My Commission Expires: 7/21/80

STATE OF WASHINGTON)
) SS
COUNTY OF KING)

On this ____ day of September, 1978, before
me personally appeared _____, to me personally
known, who, being by me duly sworn, says that he is a Vice
President of PACCAR INC, that one of the seals affixed to the
foregoing instrument is the corporate seal of said corporation,
that said instrument was signed and sealed on behalf of said
corporation by authority of its Board of Directors, and he
acknowledged that the execution of the foregoing instrument
was the free act and deed of said corporation.

(SEAL)

Notary Public

My Commission Expires: